

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff(s),

v.

JAMES VASCO KROHN POOLEY,

Defendant(s).

Case No. 2:22-CV-83 JCM (VCF)

AMENDED ORDER

Presently before the court is appellant James Pooley's ("Pooley") appeal of magistrate judge Cam Ferenbach's judgment of conviction against him. (ECF No. 1). Pooley filed an opening brief (ECF Nos. 7; 8), to which appellee the United States of America ("the government") responded (ECF No. 12) and Pooley replied (ECF No. 14).

Also before the court is the government's motion to strike portions of Pooley's appendix (ECF No. 8). (ECF No. 11). Pooley did not respond, and the time to do so has passed.<sup>1</sup>

**I. Background**

In January of 2021, the government filed a two-count criminal complaint charging Pooley with operating a motor vehicle while under the influence of alcohol in violation of 36 C.F.R. § 4.23(a)(1) and operating a motor vehicle with a BAC of .08 grams and higher in violation of 36 C.F.R. § 4.14(b). *United States v. James Pooley*, Case No. 2:21-mj-00079-VCF, ECF No. 1 (D. Nev. Jan. 21, 2021).

On August 2, 2021, Judge Ferenbach held a bench trial on Pooley's charges. *Id.* at ECF No. 18. At trial, the government presented testimony from several park rangers involved in

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<sup>1</sup> Accordingly, the governments motion (ECF No. 11) is GRANTED. Pages 138 through 141 of Pooley's appendix (ECF No. 8 at 138–141) are hereby STRICKEN.

Pooley's arrest. The rangers testified that Pooley failed to drive within his lane, had bloodshot and glassy eyes and strong odor of alcohol on his breath, had open alcohol containers in his vehicle, and admitted to drinking alcohol earlier that day. Further, over Pooley's objection, judge Ferenbach admitted breathalyzer test results showing blood alcohol contents ("BAC") of .244 and .255.

During cross examination, Pooley's counsel elicited admissions from the rangers that they made several mistakes in their reports including erroneous time stamps, misspellings, and missing case numbers, among other things.

Based on the totality of the evidence, judge Ferenbach found Pooley guilty of both counts and sentenced him to six months' probation and a \$2,500 fine. *Id.* at ECF No. 26. Pooley now appeals his conviction. *Id.* at ECF No. 31.

## **II. Legal Standard**

Magistrate judges have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors. 28 U.S.C. §§ 636, 3401; FED. R. CRIM. P. 58. "In all cases of conviction by a United States magistrate judge an appeal of right shall lie from the judgment of the magistrate judge to a judge of the district court of the district in which the offense was committed." 18 U.S.C. § 3402. The district court's review of the magistrate's judgment is governed by the same standards as an appeal from a judgment of a district court to the court of appeals. FED. R. CRIM. P. 58(g)(2)(D); *United States v. Fautanu*, 751 F. Supp. 1420, 1421 (D. Haw. 1990).

Following a bench trial, the appellate court reviews the findings of fact for clear error, and conclusions of law are reviewed *de novo*. *Oswalt v. Resolute Indus., Inc.*, 642 F.3d 856, 860 (9th Cir. 2011). When there are multiple trial errors, the cumulative effect of these multiple trial errors may prejudice a defendant to warrant reversal. *United States v. Frederick*, 78 F.3d 1370, 1381 (9th Cir. 1996).

"Under [the [clear error] standard, [the appellate court] may not reverse just because [it] 'would have decided the matter differently. A finding that is 'plausible' in light of the full record—even if another is equally or more so—must govern.'" *Cooper v. Harris*, 137 S. Ct.

1 1455, 1465 (2017) (quoting *Anderson v. Bessemer City, N.C.*, 470 U.S. 564, 573 (1985))  
 2 (internal citation omitted).

### 3 **III. Discussion**

4 Pooley appeals his conviction on three grounds: 1) no reasonable juror could convict him  
 5 based on the evidence presented at trial, 2) the trial court abused its discretion in admitting the  
 6 breathalyzer test results, and 3) cumulative errors likely prejudiced him. Having reviewed the  
 7 record, the court DENIES Pooley's appeal and AFFIRMS his conviction.

8 First, there is no clear error in the trier of fact's finding that Pooley is guilty of his  
 9 charges. Viewing the record in the light most favorable to the government, a reasonable juror  
 10 could determine that, under the totality of the evidence, Pooley was in fact operating a vehicle  
 11 under the influence of alcohol and operating a vehicle with a blood alcohol content ("BAC") of  
 12 .08 grams or higher.<sup>2</sup>

13 Next, there is no abuse of discretion in the magistrate judge's admitting the breathalyzer  
 14 test results. The breathalyzer operator witnessed the results of Pooley's two tests firsthand and  
 15 testified that the results were the same as the government's exhibit showing that Pooley's BAC  
 16 was above the legal limit. Therefore, the court properly admitted the breathalyzer test results  
 17 into evidence.

18 Finally, there is no cumulative error justifying reversal of Pooley's conviction. The  
 19 government's case is not so weak that Pooley is likely to be prejudiced by the rangers' apparent  
 20 technical errors.<sup>3</sup> The government presented evidence in the form of both testimony and reports,  
 21 and the trier of fact found that evidence to be credible enough to support a conviction.

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24 <sup>2</sup> Rangers witnessed Pooley fail to drive within his lane, observed Pooley's bloodshot and  
 25 glassy eyes, flushed face, and strong odor of alcohol on his breath, saw open alcohol containers  
 26 in his vehicle, and heard him admit to drinking alcohol prior to driving. The breathalyzer  
 operator witnessed the results of Pooley's two tests firsthand and testified that they were above  
 the legal limit.

27 <sup>3</sup> The trier of fact determined that the technical errors within the arrest report and  
 28 breathalyzer receipt were not enough to negate the other evidence against Pooley. It is not this  
 court's role to review those decisions *de novo* and overturn simply because the court may have  
 reached a different decision.

1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Pooley's appeal of his  
4 conviction (ECF No. 1) be, and the same hereby is, DENIED. Magistrate Judge Ferenbach's  
5 judgment of conviction is AFFIRMED.

6 IT IS FURTHER ORDERED that the government's motion to strike portions of Pooley's  
7 appendix (ECF No. 11) be, and the same hereby is, GRANTED. Pages 138 through 141 of  
8 Pooley's appendix (ECF No. 8 at 138–141) are hereby STRICKEN from the record.

9 The clerk is instructed to refile ECF No. 8 without those pages and close this matter.

10 DATED June 10, 2022.

11   
12 UNITED STATES DISTRICT JUDGE